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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,482

10/20/2003

Yaron Mayer

5045

7590

05/06/2005

YARON MAYER
21 AHAD HAAM ST.
JERUSALEM, 92151
ISRAEL

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT

PAPER NUMBER

3629

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,482

Applicant(s)

MAYER, YARON

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's response of 1-10-05 has been entered. Currently claims 33 are pending. The examiner will address applicant's arguments at the end of this office action.

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-27,33 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two prong test of:

1. Whether the invention is within the technological arts; and
2. Whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere idea in the abstract (i.e. abstract ideas, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. physical sciences as opposed to social sciences for example), and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, use or advance the technological arts.

In the present case, for claims 1-13,27,33, the claims still do not require the use of any technology at all and simply amount to manipulative steps that can be done by people. The examiner does not consider a balloon as is recited in part c) of claim 11 to constitute technology. A balloon can be just an elastomeric material tied at the open

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end to form the balloon. To be statutory subject matter there must be some use of technology.

Claims 14-26 are still not reciting statutory subject matter because the scope of the claims includes (or reads on) a collection of human beings (i.e. organization). This is not considered to be statutory subject matter under 35 USC 101.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5,7,10,14-26,29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by the "Rainforest Preservation Foundation". This describes events that took place more than one year prior to the filing date of this application. The earliest date applicant could be entitled to is 10/20/2002 and the events discussed in this publication took place in the 1990's.

For claims 1,2, the Rainforest Pres. Foundation discloses the selling of rainforest land from landowners to a buyer (The Rainforest Preservation Foundation") in an attempt to save the rainforests. The areas were purchased for the disclosed reason of preserving the rainforest areas. This is guarding them against continued destruction. The selling of the lands was based on certain conditions. The buyer was responsible for satisfying conditions set forth in the 4-point plan. The article discloses rotational farming, which constitutes sustainable harvesting as claimed. The locals are educated

on how to go about performing sustainable harvesting and they harvest on the land that has been purchased. The locals harvesting the land is considered to satisfy "on behalf" of those that purchased the land. This allows for the buyers to get royalties from the locals if they so desire. Reciting "so that the buyers....can also get" is the intended use of the sustainable harvesting step and is not a positive recitation of an actual step of getting royalties.

For claim 3, once the buyers took possession of the land, if they wanted to farm the land, they would inherently have to spend some money to get seed, and tools to do the farming. The use of language such as "if" sets up a hypothetical situation that may occur in the future. The article satisfies part a) of this claim.

For claim 4, the land purchased was an actual specific area.

For claim 5, it is inherent that the price of land increases with the decrease in supply. This is a basis principle of economics. The less rainforest that there is the more valuable the remaining rainforest areas are.

For claim 7, the article discloses that there were meetings with government officials, engineers, ecologists, etc.. and this is considered to be multi level marketing. It is marketing their cause on many levels, government levels, academic levels, etc.. The purpose of the marketing is to make the realization of saving the rainforests a reality, which satisfies the claimed "direct incentive".

For claim 10, in the step of educating the citizens on sustainable harvesting (i.e. rotational farming), you are employing (using) them for what is claimed.

For claims 14-26, the Rainforest Preservation Foundation anticipates what is claimed. Claim 14 is an article claim and patentable weight will only be given to what is structurally claimed, not what the organization can do or may do as a method of doing business.

For claim 29, at least the organization that conducts the claimed method and buys the land really owns the land.

For claim 30, the article inherently discloses the purchase of "a sufficiently large bunch". The 8 million acres owned by the foundation were not purchased one at a time.

For claim 31, the buyers are fully capable of doing what is claimed. If they want to, they can share revenues.

For claim 32, users can interactively view the rainforests by the use of satellites as claimed, if they have access to one. Many satellites orbit the earth and take pictures of the earth. Users have the ability to do what is claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6,8, are rejected under 35 U.S.C. 103(a) as being unpatentable over the "Rainforest Preservation Foundation", which discloses the invention substantially as claimed.

For claims 6,8, not disclosed is the price decreasing with the more a person buys (part g of claim 8). This is reciting what is known as a volume discount (buying in bulk). It is considered obvious to one of ordinary skill in the art at the time the invention was made to sell land at a cheaper per unit price when larger amounts of land are being purchased. It is very well known that in commerce when one buys more of one item the price per unit drops.

7. Claims 9,11-13,27,28,33, are rejected under 35 U.S.C. 103(a) as being unpatentable over "Rainforest Preservation Foundation" as applied to the claims above, and further in view of "To conserve rainforest, we have to help local people live sustainably" (6/1/2000).

For claim 9, not disclosed is that the government also agrees to guard the areas with police, army or "special forces". The 2000 article discloses the continued illegal activities that occur in what are supposed to be protected rainforest areas. Also disclosed is that hired guns may need to be hired to address the illegal activity. In view of the 2000 article and the recognition that illegal activity continues on preservation rainforest land it would have been obvious to one of ordinary skill in the art to have the government guard the rainforest areas with some sort of official agent of the government. Many countries have laws against the taking of certain game and plants on protected areas, this is a widely known fact. Since the government has an interest in the preservation of the rainforest lands, it is considered obvious to one of ordinary skill in the art to have them help and guard the lands against damaging/illegal behavior.

With respect to claim 11, from claim 9, some sort of high tech means will be employed to guard the preservation lands. It is a well known fact that satellites are used to view large areas of the earth for study and analysis. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use satellites to view the large rainforest areas so that the condition of the rainforest can be evaluated. This would allow for very large areas to be viewed so that the progress or lack of progress in saving the rainforests can be determined.

For claim 12, the claimed limitation is not disclosed. It is considered obvious to one of ordinary skill in the art to promote the use of alternate fuels so that the rainforest is not plundered for wood fuel. Knowing that the rainforests are being cut down at alarming rates makes the step of promoting alternate sources of fuel to the use of wood is obvious, especially in view of the fact that what you are trying to preserve is a forest.

For claim 13, when one would look to what kind of alternate fuels could be used instead of rainforest tree wood, one of ordinary skill in the art would obviously look to a fast growing plant as claimed. If one could grow a fast growing plant for fuel, the source itself could be grown again fast. One would not look to slow growing plants that would take years to grow, as that would take too long and would allow the destruction of the rainforests to continue at the current rate.

For claim 27, it is not disclosed that class action lawsuits will be filed to stop the destruction of the rainforests. If a multi national organization is destroying the rainforest in the opinion of what can be called an affected class, one would obviously look to the courts to file a lawsuit. The filing of a class action lawsuit is considered obvious to one

of ordinary skill in the art at the time the invention was made in an attempt to stop the destruction of the rainforest.

For claim 28, the choice of what you decide to sue for is a choice that is considered obvious. Obviously you would sue for an amount that relates to damages incurred, otherwise you would have no standing in a court of law. If no damages can be shown as being incurred, there is no merit to the lawsuit. When you sue, you are suing for damages that have already taken place. Since claim 27 does not require that the governments be sued the claim is satisfied by just suing for back damages.

For claim 33, not disclosed is the use of balloons or zeppelins for the purpose of carrying harvests from various areas. Knowing that a true rainforest area has no roads and travel by foot is inherently very difficult due to the nature of the rainforest itself, it is considered obvious to one of ordinary skill in the art at the time the invention was made to use a balloon or zeppelin to transfer harvests. One looking to transport their harvest would clearly look to some form of transportation to accomplish the transfer of the harvest and balloons are very well suited for the task. One of ordinary skill in the art would appreciate the use of balloons since they can take off with just a small amount of area (can land in cleared areas).

8. Applicant's arguments filed 1/10/05 have been fully considered but they are not persuasive.

With respect to the 35 USC 101 rejection the arguments are found as non-persuasive. The key point of the rejection is that no technology is being used to

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accomplish the method and because of this the claims are not considered to be within the technological arts. The rejection is deemed to be proper. For claims 14-26, the claims still have a scope that includes people which is improper. It is clear that applicant's organization is made up of people who buy rainforest lands. People are not allowed to be patented. Claims 14-26 are reciting non-statutory subject matter for this reason.

Concerning the prior art rejections, the argument for claim 1 is moot based on the amended claim. The examiner has addressed the new limitation in the body of the rejection and the examiner respectfully disagrees with applicant. When you educate locals on sustainable harvesting, they are the ones that do the work and they do not own the land. This satisfies what is claimed. The claim does not recite that any royalties are paid out, just that the sustainable harvesting allows for royalties to occur (not recited as an actual step). Concerning the multi level marketing of claim 7, it is clear that when the interested parties meet with academics and government officials, the goal is to get more land saved by enticing more people to participate and to help the cause grow. For claim 8, the examiner believes the scope of the claim includes the well known method of "volume discounts". The claim only requires the ability to buy land at cheaper rates. For claim 11, the examiner has set forth the reasoning as to why the claim is considered obvious based on the most recent amendment and the new claim scope. For claim 28, the claim does not recite that the government is being sued. What is claimed is "and the policy used regarding the government is to sue the governments only for future damages.....go on.". This is not a recitation of actually suing the

government but is reciting that the policy is to sue (implied but not claimed). The argument is non-persuasive.

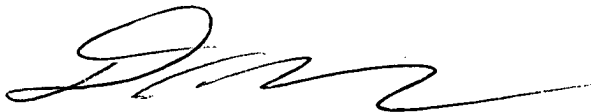
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL
PRIMARY EXAMINER